

DEPARTMENT OF STATE REVENUE

28970618.LOF

LETTER OF FINDINGS NUMBER 97-0618

Controlled Substance Excise Tax

For The Period: 09/08/93

NOTICE: Under IC 422-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Controlled Substance Excise Tax - Possession

Authority: IC 6-7-3-5, Cliff v. Indiana Department of State Revenue, 660 N.E.2d 310 (1995).

The taxpayer protests assessment of controlled substance excise tax.

II. Tax Administration - Penalty

Authority: IC 6-7-3-11.

The Taxpayer protests assessed penalty.

STATEMENT OF FACTS

The Department issued a jeopardy assessment against the taxpayer based on the taxpayer's possession of 4.13 grams of marijuana and 23.29 grams of cocaine. The taxpayer was arrested on September 8, 1993. The taxpayer was then assessed \$2,193.60 by the Department on January 21, 1994. The taxpayer entered into a plea agreement on March 2, 1994 and served three years in various correctional facilities around Indiana. The taxpayer was paroled on December 2, 1997.

I. Controlled Substance Excise Tax - Possession

DISCUSSION

Indiana Code 6-7-3-5 states:

The controlled substance excise tax is imposed on controlled substances that are:

- (1) delivered,
- (2) possessed; or
- (3) manufactured;

in Indiana in violation of IC 35-48-4 or 21 U.S.C. 841 through 21 U.S.C. 852.

The taxpayer stated that because he has already served three (3) years in various correctional facilities around Indiana, it is double jeopardy to have to serve time for the crime and be assessed tax on the marijuana and cocaine he possessed. The Indiana Supreme Court addressed this issue in Cliff v. Indiana Department of State Revenue, 660 N.E.2d 310, 313 (1995). The Court held that because the Department's assessment was first in time, it does not constitute the double jeopardy. In this case, the Department's assessment came before the taxpayer's plea bargain. The Department's assessment occurred on January 24, 1994 and the disposition of the taxpayer's criminal case was March 2, 1994.

FINDING

The taxpayer's protest is denied.

II. Tax Administration - Penalty

DISCUSSION

The taxpayer protests the assessed 100% penalty. Indiana Code 6-7-3-11 states in pertinent part, "A person who fails or refuses to pay the tax imposed by this chapter is subject to a penalty of one hundred percent (100%) of the tax in addition to the tax."

FINDING

The taxpayer's protest of the Department's imposition of a one hundred percent (100%) penalty is denied.